

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOSEPH DELLUTRI,

Plaintiff,

v.

NEW YORK POLICE DEPARTMENT,
et al.,

Defendants.

10 Civ. 9074 (CM)

Conference

MEMO ENDORSED

New York, N.Y.
April 20, 2012
11:20 a.m.

Before:

HON. COLLEEN MCMAHON

District Judge

APPEARANCES

JOSEPH DELLUTRI
Plaintiff pro se

Handwritten signatures and initials:
f. m. m.
V. S. D.
5/14/12

1 (Case called)

2 THE COURT: Mr. Dellutri, I'm Judge McMahon.

3 MR. DELLUTRI: Pleased to meet you.

4 THE COURT: No one is here from Corporation Counsel
5 because you haven't served anybody.

6 MR. DELLUTRI: Correct.

7 THE COURT: Mr. Dellutri, these things happened to you
8 in 2008, December, you were arrested?

9 MR. DELLUTRI: Yes, ma'am.

10 THE COURT: Mr. Dellutri, your claim is now time-
11 barred. It's too late for you to sue these people. You didn't
12 stop the clock as to any individual defendant who was involved
13 or as to city. You didn't stop the clock when you filed. You
14 had to serve them. You were sent a service package in December
15 of 2010 and you had 120 days to serve the summons and complaint
16 on each defendant. You didn't do that, and now it's too late.

17 MR. DELLUTRI: I was not aware of that, your Honor.

18 THE COURT: Unfortunately, you have to be aware of
19 that. You have to make yourself aware of what the rules are.
20 You were sent a service packet. We have it on the docket
21 sheet. You acknowledged that you got your service packet.

22 MR. DELLUTRI: Yes, your Honor.

23 THE COURT: You didn't do anything with it. You
24 didn't follow the instructions. You didn't serve process.

25 MR. DELLUTRI: It was an honest oversight on my part.

1 The research I have done tells me there is no time limit on a
2 civil lawsuit against anyone.

3 THE COURT: On the contrary, there is a 3-year time
4 limit on a civil lawsuit. The only thing that there is no time
5 limit on is a criminal charge of murder. There is a time limit
6 on everything else. I'm afraid you don't have a case anymore,
7 because you let it go. You didn't serve when you were sent the
8 service packet, and there is nothing I can do about that.

9 MR. DELLUTRI: Your Honor, is there anything, any
10 information that you can give me, since I'm not aware of this?
11 I did not intentionally do it. Can I proceed with the case in
12 spite of my lack of --

13 THE COURT: The answer is no. I would have extended
14 the 120 days for service of process if there were still time
15 for you to serve process because I would have said you're
16 acting on your own, you're pro se, you didn't realize that you
17 only had four months to follow the instructions on the service
18 packet and do what the service packet tells you to do.

19 The service packet does tell you what you're supposed
20 to do. It explains that you have to serve the defendants with
21 process. You didn't do that. There comes a point where the
22 law bars your claim. It is 3 years after the date of your
23 arrest for a claim of false arrest.

24 MR. DELLUTRI: I was so traumatized. I'm still
25 traumatized by the experience. This is my mitigating

1 circumstances: I was just so traumatized. It was only by
2 receiving your letter that I was able to begin the process
3 again. That's how traumatized I was from this.

4 THE COURT: Do you have a doctor who has been treating
5 you and can give us an affidavit to that effect?

6 MR. DELLUTRI: No, your Honor.

7 THE COURT: I'm sorry, sir. I'm dismissing your
8 complaint because it's barred by the statute of limitations.
9 You did not do what you were supposed to do, what you were told
10 to do, which is serve process and give notice for the
11 defendants. Nobody is here for the defendants because they
12 don't even know that they have been sued.

13 MR. DELLUTRI: Actually, I spoke to one of them. He
14 actually spoke to me. I did not approach him, he approached
15 me. He knows he is being sued.

16 THE COURT: Knowing that you are being sued means you
17 have received a copy of the court papers by service of process.
18 That's what it means.

19 MR. DELLUTRI: I understand, your Honor.

20 THE COURT: It's a technical term.

21 MR. DELLUTRI: Yes, your Honor. I was so traumatized,
22 I could not even go to the doctor.

23 THE COURT: You couldn't go to the doctor and you
24 haven't worked since?

25 MR. DELLUTRI: That's correct, your Honor.

1 THE COURT: I'm sorry. I'm going to dismiss your case
2 because the statute of limitations on the false arrest claim
3 ran on December 6th of 2011 and the statute of limitations on
4 the malicious prosecution claim ran on December 7, 2011.

5 MR. DELLUTRI: Might I appeal?

6 THE COURT: Yes, of course. What we may do is we will
7 enter an order and you can take an appeal to the Second
8 Circuit, United States Court of Appeals for the Second Circuit.
9 If they tell me to reinstate your case, I'll reinstate your
10 case.

11 We'll get an order out to you sometime in the next
12 couple of weeks.

13 MR. DELLUTRI: I appreciate that, your Honor.

14 THE COURT: Thank you very much, sir.

15 MR. DELLUTRI: Thank you very much, your Honor.

16 (Adjourned)

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